his agent seem material; for the buyer's power to affect the journey of the goods is equally great whether the agent is a common carrier or the buyer's private forwarder.[16] Hence, where the buyer sends his own vessel or cart for the goods, it is difficult to see why the goods are not still in transit, though in the control and constructive possession of the buyer, if the servant's only authority on receipt is to convey them to a specified place. The authorities are, however, almost unanimous that if such an agent receives the goods for the purpose of making final delivery in person, the transit is thereupon ended.[17]

RECENT CASES.

ACCOUNT — ACCOUNT STATED — PROMISSORY NOTES AS BASIS FOR ACCOUNT STATED. — The plaintiff held four overdue promissory notes made by the defendant. After calculating the interest, he stated to the defendant the total amount due. The defendant admitted that the amount was correct. *Held*, that the plaintiff cannot recover as for an account stated. *Jasper Trust Co.* v. *Lampkin*, 50 So. 337 (Ala.).

If a creditor states and a debtor admits that as a result of a past transaction a fixed sum is due, the court will imply a promise to pay such sum. If the debt is not liquidated, this promise is good consideration for the creditor's implied promise to accept the sum stated as payment, and the latter can bring an action on an account stated. The debt, if unliquidated, need not be for more than one item. *Knowles* v. *Michel*, 13 East 249. But there is no legal detriment in a promise to pay a liquidated debt; and since in the principal case the interest had only to be computed, the court properly considered the debt liquidated and denied recovery. The decision may also be supported by the rule that a specialty cannot be merged into an obligation of lesser dignity such as an account stated. *Young* v. *Hill*, 67 N. Y. 162. Since negotiable instruments may well be treated as commercial specialties this rule might properly be extended to them. But see *Highmore* v. *Primrose*, 5 M. & S. 65.

ADMIRALTY — CONTRACTS — MORTGAGEE'S RIGHT TO FREIGHT. — After coal was supplied to a vessel on the mortgagor's credit, the mortgagee took possession of the vessel. The freight money which was thereafter earned on the homeward voyage was paid into court and claimed by the parties who had supplied the coal. *Held*, that the freight money belongs to the mortgagee. *El Argentino*, 101 L. T. R. 80 (Prob. Div. Eng.).

When a mortgagee takes possession of a vessel, he becomes its owner and is entitled to its earnings, regardless of antecedent contract rights. *Keith* v. *Burrows*, 2 A. C. 636; *Pelayo* v. *Fox*, 9 Pa. St. 489. In England, it is settled that no materialman can have a lien. *Northcote* v. *Owners of the Henrich Björn*, 11 A. C. 270. Hence the principal case correctly decides that when title to the coal was transferred to the mortgagor the seller lost all interest therein. See *The Two Ellens*, 26 L. T. R. 1; *The Pacific*, Brown & L. 243. In America the same result should be reached if supplies are furnished in domestic ports; but not if furnished in foreign ports. See *The J. E. Rumbell*, 148 U. S. 1. For in the latter case, a lien

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[16] London, etc., R'y *v.* Bartlett, *supra;* See Whitehead *v.* Anderson, 9 M. & W. 518, 534.

[17] Schotsmans *v.* Lancashire, etc., R'y Co., L. R. 2 Ch. 332. *Contra*, Newhall *v.* Vargas, 13 Me. 93. See also Merchant's, etc., Co. *v.* Phenix, etc., Co., 5 Ch. D. 205, 219.

attaches. *The Scotia*, 35 Fed. 907. And such liens have priority over a mortgagee's claim. *The H. C. Wahlberg*, 87 Fed. 361; *The Scotia, supra; The Guiding Star*, 9 Fed. 521. Freight money is subject to maritime liens. *The Andalina*, 12 P. D. 1; *The Brig Wexford*, 7 Fed. 674. And a maritime lien is not a mere debt against the owner of the vessel, but is a right *in rem*, enforceable against the ship itself. See *The John G. Stevens*, 170 U. S. 113. So even if the mortgagee's claim to freight be based not on a lien, but on his possession of the ship, it should be subject to the materialman's claim against the vessel. See *The Brig Wexford, supra.*

AGENCY — CREATION OF AGENCY — APPOINTMENT BY INFANT. — The plaintiffs, who were infants, made a contract through an authorized agent to buy land. The defendants refused to convey on the ground that the contract was void. *Held*, that the plaintiffs can recover damages. *Johannsson* v. *Gudmundson*, 11 West. L. Rep. 176 (Manitoba, Ct. App., June 14, 1909).

According to a great mass of authority, an infant is incapable of appointing an agent. *Doe d. Thomas* v. *Roberts*, 16 M. & W. 778; *Holden* v. *Curry*, 85 Wis. 504, 510. This rule is repugnant to the modern conception of an infant's powers, and seems to have grown out of the old test of the validity of the acts of an infant, which was whether they were beneficial or prejudicial to him. Warrants of attorney to confess judgment or convey land were considered necessarily prejudicial, so they were always said to be void, and the same thing came to be said of the appointment of agents for other purposes. But an exception to this rule was recognized in the appointment of an attorney to accept seisin, which was clearly beneficial. See *Zouch* v. *Parsons*, 3 Burr. 1794, 1804, 1808. In an increasing number of jurisdictions it is now held that the appointment of an agent by an infant for ordinary purposes is not void, but that acts of such an agent for the infant principal, like acts of the infant himself, are voidable at the option of the infant. *Whitney* v. *Dutch*, 14 Mass. 457; *Hardy* v. *Waters*, 38 Me. 450; *Coursolle* v. *Weyerhauser*, 69 Minn. 328. In following this view, the principal case seems sound.

BANKRUPTCY — DISCHARGE — SUBSEQUENT ACTION FOR FRAUD. — After the defendant had been adjudicated bankrupt, the plaintiff filed his claim for goods sold and delivered and received part payment thereon. Subsequent to the defendant's discharge, the plaintiff sued for the balance due, on the ground that the sale was induced by the defendant's fraudulent representations. *Held*, that he has not waived the right to recover for the defendant's fraud. *Standard Sewing Machine Co.* v. *Kattell*, 117 N. Y. Supp. 32 (App. Div.).

Under section 17 (2) of the Bankruptcy Act of 1898 as amended in 1903, it seems clear that a cause of action for deceit is not affected by a discharge in bankruptcy. See *Mackel* v. *Rochester*, 135 Fed. 904. So the question is whether the plaintiff had lost his right to sue for fraud by his election to prove his claim. To constitute an election, some decisive act in pursuit of one of two inconsistent remedies must be done with knowledge of the facts. *Pekin Plow Co.* v. *Wilson*, 66 Neb. 115. By the weight of authority, proving a claim with knowledge of the bankrupt's fraud is sufficient evidence of such election, if the remedies are inconsistent. *Standard Varnish Wks.* v. *Haydock*, 143 Fed. 318. But a suit for fraud is consistent with affirmance of the sale induced. *Glover v. Radford*, 120 Mich. 542. Some cases, however, hold that a judgment for the price is a bar to a subsequent action for the fraud. *Caylus* v. *New York, Kingston & Syracuse Railroad Co.*, 76 N. Y. 609. But these decisions result rather from an unwillingness to give two judgments for claims arising out of the same transaction than from any supposed election. In the principal case, only the value of the goods less payments already made was demanded, and any dividends received would undoubtedly go toward lessening the judgment. The decision, therefore, seems correct. A previous case in the same jurisdiction is in accord. *Maxwell* v. *Martin*, 130 N. Y. App. Div. 80.